IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORP.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**2:06-CV-165-DF**
	§	
CITY NATIONAL CORPORATION, et al.,	§	
	§	
	§	
Defendants.	§	

O R D E R

Before the Court is Defendants' Motion (1) to Dismiss for Lack of Proper Venue; (2) to Dismiss for Failure to State a Claim; or, in the Alternative, (3) for More Definite Statement; and Joinder in Joint Motion of Defendants to Dismiss, or in the Alternative, for More Definite Statement in Case No. 2:06-CV-72. Dkt. Nos. 13 & 14. Also before the Court are Plaintiff's response and Defendants' reply. Dkt. Nos. 24 & 30, respectively. Plaintiff has also filed a Motion to Authorize Jurisdictional Discovery, to which Defendants have responded. Dkt. Nos. 25 & 31, respectively. The parties have also submitted supplemental briefing with the Court's permission. Dkt No. 41 & Civil Action No. 2:06-CV-72, Dkt. No. 521. Having considered the briefing and all relevant papers and pleadings, the Court finds that Plaintiff's motion should be **GRANTED**, Defendants' motion to dismiss for lack of proper venue should be **DISMISSED WITHOUT PREJUDICE**, Defendants' motion for joinder should be **TERMINATED AS MOOT**, and Defendants' motion to dismiss should be **DENIED**.

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I. BACKGROUND

Plaintiffs bring this patent infringement suit alleging infringement of United States Patent Nos. 5,910,988, 6,032,137, 5,265,007, and 5,717,868. Compl., Dkt. No. 1. Defendant City National Bank (the "Bank") is a bank with offices in California and New York City. Dkt. No. 13 at 13. Defendant City National Corporation (the "Corporation") is a bank holding company of which defendant City National Bank is a subsidiary. Dkt. Nos. 13 at 12 & 24 at 10. Defendants move to dismiss for improper venue. Dkt. No. 13. Defendants also move to dismiss for failure to state a claim, or in the alternative for a more definite statement, and incorporate the arguments made in a similar motion in a related case, namely Civil Action No. 2:06-cv-72, Dkt. No. 80. *Id.* Plaintiffs move for jurisdictional discovery in the event the Court finds it appropriate.

The Court originally set a hearing on these motions for January 16, 2007. Dkt. No. 34. The parties requested, by telephone, a 30-day continuance of that hearing, and the Court granted this request by cancelling the January 16 hearing and ordering the parties to submit a written report within 30 days as to their intentions on these motions. Dkt. Nos. 36 & 37. The parties submitted a report wherein they requested permission "to file supplements to their respective motions and responses at issue." Dkt. No. 39. The Court subsequently allowed the parties to file supplements to their respective motions and responses at issue. Dkt. No. 40. Each side submitted a supplemental brief on February 16, 2007. Dkt. No. 41 & Civil Action No. 2:06-CV-72, Dkt. No. 521.

The present case has been consolidated into Civil Action No. 2:06-CV-72. Dkt. No. 212. In that case, United States Magistrate Judge Caroline M. Craven heard and decided motions similar to those presently before the Court. Civil Action No. 2:06-CV-72, Dkt. No. 394.

Since the filing of Defendants' present motion for Joinder in Joint Motion of Defendants to Dismiss, or in the Alternative, for More Definite Statement in Case No. 2:06-CV-72, the Court denied that motion on December 27, 2006. Civil Action No. 2:06-CV-72, Dkt. No. 399. Defendants' present motion for joinder is **TERMINATED AS MOOT**. The Court incorporates herein its December 27, 2006 Order. *Id.* Because Defendants' essentially incorporate the motion to dismiss formerly pending in Civil Action No. 2:06-CV-72 into their present motion, Defendants' Motion to Dismiss for Failure to State a Claim should be similarly **DENIED**.

II. LEGAL PRINCIPLES

Venue in a patent infringement case is proper in any district that may exercise personal jurisdiction over the corporate defendant at the time the action is commenced. *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1583 (Fed Cir. 1990); *see also* 28 U.S.C. §§ 1391(c) & 1400(b). "The venue issue is therefore subsumed in the personal jurisdiction issue." *North Am. Philips Corp. v. Am. Vending Sales, Inc.*, 35 F.3d 1576, 1577 n.1 (Fed. Cir. 1994). A district court may exercise personal jurisdiction where: (1) the state's long-arm statute permits jurisdiction; and (2) the exercise of personal jurisdiction over the defendant does not violate federal due process. *Wilson v. Belin*, 20 F.3d 644, 647 (5th Cir. 1994); *see also Akro Corp v. Luker*, 45 F.3d 1541 (Fed. Cir. 1995). The Texas long-arm statute is coextensive with federal due process, thereby limiting the inquiry to due process. *Id.* at 647.

Personal jurisdiction may be either general or specific. General jurisdiction is proper where the defendant has "continuous and systematic" contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. 408, 414-15 (1984). Specific jurisdiction is proper where the defendant has (1) "minimum contacts" with the forum state, and (2) the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *Beverly Hills Fan Co.*, 21 F.3d 1558, 1565 (Fed. Cir. 1994). Minimum contacts may include purposefully availing one's self of the benefits of doing business in the forum state, directing activities in the forum state, and placing products in the "stream of commerce." *Id.* The Court should also consider the degree to which the defendant's contacts arise out of, or relate to, the conduct about which plaintiff complains. *Id.*

"When a nonresident defendant presents a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing the district court's jurisdiction over the nonresident." *Allred v. Moore & Peterson*, 117 F.3d 278, 281 (5th Cir. 1997) (quoting *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985)).

III. DISCUSSION

Defendants argue that Plaintiff's allegations of infringing activity in the Eastern District of Texas (this "District") are too conclusory and unsubstantiated to warrant a finding of personal jurisdiction. Defendants represent that "[t]he Bank's sole contacts with the District are three loans with aggregate outstanding balances of about $424,000 whose borrowers list addresses in the District; one active loan secured by property in the District; and records of about 132 accounts held by customers with mailing address[es] in the District, but originating out of and maintained by Bank facilities in California." *Id.* at 15. Defendants argue that the Corporation is merely a holding company and has not directed any banking activity in the Eastern District of Texas. Dkt. No. 13 at 12-13. Defendants also argue that asserting personal jurisdiction over Defendants would not "comport[] with principles of fair play and substantial justice" because Defendants could not have anticipated being haled into Court in this District. Dkt. No. 13 at 20 (citing *Beverly Hills Fan*, 21 F.3d at 1565).

Plaintiff responds that both the Corporation and the Bank are subject to specific jurisdiction. As to the Bank, Plaintiff argues that the Bank's roughly 130 account holders in the Eastern District of Texas warrant the exercise of personal jurisdiction. Dkt. No. 24 at 6. These customers can purportedly access check images through the Bank's online banking service. *Id.* Plaintiff argues that the Bank's "interactive web site demonstrates the Defendants' purposeful availment" of the benefits of doing business in this District. *Id.* at 7. Plaintiff further argues that because personal jurisdiction is proper as to the Bank, it is proper as to the Corporation. Dkt. No. 24 at 10.

As to the Bank, Defendants reply that a customer's choice to access the Bank's online banking website is a "unilateral activity" and cannot form the basis of purposeful availment necessary for personal jurisdiction. Dkt. No. 30 at 5. Defendants also argue that even if customers used the Bank's website to view checks, that is not infringing activity and therefore does not justify exercising personal jurisdiction. Dkt. No. 30 at 6. Defendants also reply that the Corporation does not provide banking services. Dkt. No. 30 at 3.

Plaintiff submits that "in the event that the Court believes additional evidence on these issues is necessary, [Plaintiff] requests that the Court enter an Order authorizing it to conduct specific jurisdictional discovery regarding [Defendants]." Dkt. No. 25 at 2. The Court finds Plaintiff's motion well taken and it should be **GRANTED**.

IV. CONCLUSION

Plaintiff's Motion for Authorization of Jurisdictional Discovery (Dkt. No. 25) is hereby **GRANTED AS MODIFIED**. Accordingly, it is hereby

ORDERED that Plaintiff may propound interrogatories, requests for production, and requests for admissions to Defendants dealing specifically with jurisdictional issues. These discovery requests shall not count against the number of discovery requests available to Plaintiff under the Federal Rules of Civil Procedure and the Court's Local Rules. Plaintiff may also depose one Rule 30(b)(6) representative of each Defendant with the most knowledge of the jurisdictional issues raised by each Defendant. This discovery shall be completed within 60 calendar days of the entry of this Order. Defendants may renew their motion to dismiss, if appropriate, following jurisdictional discovery.

Defendants' Motion to Dismiss for Lack of Proper Venue (Dkt. No. 13) is hereby **DISMISSED WITHOUT PREJUDICE**. Defendants' Motion for Joinder in Joint Motion of Defendants to Dismiss, or in the Alternative, for More Definite Statement in Case No. 2:06-CV-72 (Dkt. No. 14) is hereby **TERMINATED AS MOOT.** Defendants' Motion to Dismiss for Failure to State a Claim (Dkt. No. 13) is hereby **DENIED**.

IT IS SO ORDERED.

SIGNED this 26th day of February, 2007.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE